

IN THE CIRCUIT COURT FOR THE COUNTY OF COLE  
STATE OF MISSOURI

STATE OF MISSOURI ex rel. )  
JEREMIAH W. (JAY) NIXON )  
Attorney General, )  
Petitioner, ) Cause No.  
vs. )  
 ) Division \_\_\_\_  
HONORABLE MATT BLUNT, )  
Secretary of State for the State of Missouri )  
 )  
Defendant. )

**PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, FOR  
DECLARATORY JUDGMENT**

COMES NOW Jeremiah W. (Jay) Nixon, Attorney General of the State of Missouri, as and for his Petitioner for a Writ of Mandamus or, in the alternative, for Declaratory Judgment, states as follows:

1. Jeremiah W. (Jay) Nixon is the duly elected Attorney General of the State of Missouri.
2. The Honorable Matt Blunt is the duly elected Secretary of State for the State of Missouri.
3. On February 24, 2004, the Missouri Senate passed by a vote of 26 yeas and 6 nays Senate Joint Resolution 29, a proposed constitutional amendment to be put to a vote of the people of this state. The Senate's actions and votes with respect to SJR 29 are reported at page 500 of the Senate Journal, attached hereto as Exhibit A.

Exhibit 2

4. On May 14, 2004, the Missouri House of Representatives took up and passed without amendment Senate Joint Resolution 29. The House's actions, and votes of 130 yeas and 25 nays, are reflected on page 2016 of the House Journal, attached as Exhibit B.

5. A true and correct copy of SJR 29, truly agreed and finally passed, is attached as Exhibit C.

6. Article XII, Section 2(a) of the Missouri Constitution provides in its entirety:

Constitutional amendments may be proposed at any time by a majority of the member-elect of each house of the general assembly, the vote to be taken by yeas and nays and entered on the journal.

7. Article XII, Section 2(b) of the Missouri Constitution provides that an amendment to the constitution proposed by the General Assembly pursuant to Article XII, Section 2(a) shall be put to the voters in the next general election "or at a special election call by the governor prior thereto . . . ."

8. On May 19, 2004, Governor Bob Holden issued a Proclamation pursuant to Article XII, Section 2(b) of the Missouri Constitution calling for special election on August 3, 2004, and setting forth the constitutional amendment proposed by SJR 29 to be vote upon by the people. A copy of this Proclamation is attached as Exhibit D.

9. On May 19, 2004, Respondent Secretary of State Matt Blunt wrote Governor Holden, stating that he had not received a copy of SJR 29, signed by the Speaker of the

House and the President Pro-Tem of the Senate, and cannot and will not begin to execute his legal duties to prepare the ballot title until he received the signed bill from the General Assembly. A copy of his letter is attached as Exhibit E.

10. Respondent Secretary Blunt has a clear and present legal duty to do everything within the power of his office to effect the August 3, 2004, special election called for in the Governor's Proclamation.

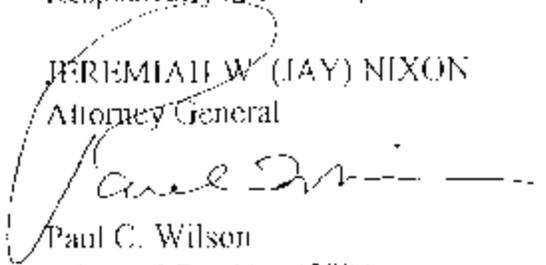
11. Respondent Secretary Blunt has a clear and present legal duty to fulfill his duties under Section 116.160 RSMo. 2000, and to do so in a manner which ensures that the constitutional amendment proposed in SJR 29 is included on the ballot in the August 3, 2004, special election already called by the Governor.

WHEREFORE, the Attorney General prays for a Preliminary and Permanent Writ of Mandamus ordering the Respondent Secretary of State Blunt to comply with the aforementioned legal duties.

IN THE ALTERNATIVE, the Attorney General prays that a final and appealable Declaratory Judgment be entered without delay declaring that Respondent Secretary of State's duties under Section 116.160 RSMo 2000 have been triggered, and no further act or circumstances need exist before the Respondent can and must perform his duties under that statute.

Respectfully submitted,

BEREMIAH W. (JAY) NIXON  
Attorney General



Paul C. Wilson  
Missouri Bar No. 46804  
James R. Layton  
Missouri Bar No. 45631  
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Supreme Court Building  
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Telephone: (573) 751-8851  
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Attorneys for Petitioner

The President declared the bill passed.

On motion of Senator Yeckel, title to the bill was agreed to.

Senator Yeckel moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

**SJR 29**, introduced by Senator Steelman, et al, entitled:

Joint Resolution submitting to the qualified voters of Missouri, an amendment to the Constitution of Missouri relating to marriage.

Was taken up by Senator Steelman.

On motion of Senator Steelman, **SJR 29** was read the 3rd time and passed by the following vote:

YEAS—Senators			
Bland	Callahan	Caskey	Caulthers
Champion	Childers	Clemens	Dolan
Dougherty	Foster	Gibbons	Giesheimer
Gross	Jacob	Kennedy	Kinder
Kindt	Loudon	Mathewson	Nedler
Russell	Scott	Shields	Steelman
Stoff	Vogel—26		

NAYS—Senators			
Bray	Callahan	Day	Good
Child	Wheeler—4		

Absent—Senator Yeckel—1

Absent with leave—Senator Bartle—1

The President declared the joint resolution passed.

On motion of Senator Steelman, title to the joint resolution was agreed to.

Senator Steelman moved that the vote by which the joint resolution passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

**SB 803**, introduced by Senator Gross, entitled:

An Act to repeal section 210.145, RSMo, and to enact in lieu thereof one new section relating to

investigations of child abuse and neglect, with emergency clause.

Was called from the Consent Calendar taken up.

On motion of Senator Gross, **SB 803** was the 3rd time and passed by the following vote:

YEAS—Senators			
Bland	Bray	Callahan	Caskey
Caulthers	Champion	Childers	Child
Day	Dolan	Dougherty	Foster
Giesheimer	Good	Griesheimer	Gross
Jacob	Kennedy	Kinder	Kindt
Loudon	Mathewson	Nedler	Russell
Scott	Shields	Steelman	Stoff
Vogel	Wheeler	Yeckel—31	

NAYS—Senators—None

Absent—Senators

Callahan—2 Quack—2

Absent with leave—Senator Bartle—1

The President declared the bill passed.

The emergency clause was adopted by following vote:

YEAS—Senators			
Bland	Bray	Callahan	Caskey
Caulthers	Champion	Childers	Child
Day	Dolan	Dougherty	Foster
Giesheimer	Good	Griesheimer	Gross
Jacob	Kennedy	Kinder	Kindt
Loudon	Mathewson	Nedler	Russell
Scott	Shields	Steelman	Stoff
Vogel	Wheeler	Yeckel—31	

NAYS—Senators—None

Absent—Senators

Callahan—2 Quack—2

Absent with leave—Senator Bartle—1

On motion of Senator Gross, title to the was agreed to.

Senator Gross moved that the vote by v

THIRD READING OF SENATE JOINT RESOLUTION

SJR 29, relating to same sex marriages, was taken up by Representative English.

Representative Crowell moved the previous question.

Which motion was adopted by the following vote:

AYES: 070

Baker	Bean	Braun	Behner	Bishop
Blevins	Black	Brough	Binger	Brown
Bruns	Byrd	Cooper 155	Crowder	Crowell
Cunningham 145	Cunningham 86	Davis 19	Deeken	Demusky
Dethrow	Dixon	Dusenberg	Emery	English
Ervin	Faves	Goodman	Guest	Hobbs
Hubard	Ice	Jackson	Johnson 47	Kelly 144
King	Kingery	Lynn	Lizibke	Lipt
Lautkeneyer	Marsh	May	Meyer	Miler
Moore	Morris	Muehlinger	Myers	News
Pagn	Parker	Pearce	Phillips	Peterson
Pratt	Ringson	Quinn	Rhodes	Renaud
Richard	Rosoff	Rosenman	Rupp	Sander
Seaman	Schmittack	Schuster	Selby	Seif
Shoemaker	Smith 118	Smith 14	St. Onge	Seimick
Stevens	Sutherland	Taylor	Tarkeid	Towler
Wallace	Wasson	Widberger	Wilson 115	Witmer 130
Wood	Wright	Yates	Zwick	Markus Spitzer

NOES: 063

Abel	Barnes	Bass	Haykas	Brooks
Beaman	Campbell	Carroll	Chiles	Carroll
Boas	Davis 24	Downey	DeWitt	Chapman
Brace	Demps	Edwards	Edwards	Langston
Harri 110	Harris 27	Hoyland	Herk	Engel
Hankins	Hubard	Johnson 61	Irwin	Engel
Kinsky	Pollock	Jensen	Jarvis	Irwin
Lowe	Mason	Machens	Mason	Wicklin
Ransahl	Sager	Salva	Salva	Spitzer
Shoemaker	Skaggs	Strong	Swarper	Thompson
Villa	Vogt	Wagner	Walker	Weld
Walton	Whorter	Wilensky	Wilson 25	Wilson 42
White	Yamp	Youn		

PRESENT: 091

Johnson 90

Ward

ABSENT WITH LEAVE: 008

Angel  
Jenn

Avery  
Joly

Cooper 130  
Wiebeck

Carceran

Hunt

Representative Johnson (90) requested a verification of the roll call on the motion to move the previous question.

On motion of Representative Engler, SJR 29 was truly agreed to and finally passed by the following vote:

AYES 109

Acid	Angell	Baker	Barritz	Bea
Boydton	Behren	Bishop	Bevins	Black
Burd	Bingh	Bjorge	Brown	Bruce
Card	Cooper 170	Cooper 155	Crawford	Crewell
C. Cunningham 140	Cunningham 87	Danough	Davis 177	Davis 28
Decker	Dangstly	Darlow	Dixon	Husenberg
DiAnna	Emery	Engler	Ervin	George
Goodman	Green	Guest	Hampton	Harris 310
Henke	Hobbs	Holand	Hunter	Icet
Jackson	Jenon	Johnson 47	Kelly 144	Kelly 56
King	Kingery	Kuevarer	Lager	Lawson
Lentke	LeVero	Liese	Lipke	Lutkenmeyer
Marsh	May	Mayer	McKenna	Meadows
Meiners	Mellier	Moore	Morris	Muecke
Munclinger	Myers	Nieves	Page	Parker
Panno	Phillips	Porwood	Pratt	Purgason
Quinn	Ransdell	Reiter	Reinhart	Richard
Rask	Ruestema	Rupp	Salva	Sander
Schaeff	St. Helena	Schneider	Schoenicht	Seipfried
Seby	Sell	Shoemaker	Shormya	Slaggs
Smith 118	Smith 14	Sprung	St. Onge	Stefanick
Stevenson	Sutherland	Swinger	Taylor	Thompson
Tuelhoff	Townley	Vielbrock	Wagner	Wallace
Walton	Ward	Wasson	Whorton	Willoughby
Wilson 175	W. Wilson 170	Wise	Wood	Wright
Young	Yount	Young	Zuerfel	Melan Spahr

NOES 000

Beck	Blument	Clayton	Cornaton	Cutts
Boys	Connelly	Dougherty	Fraser	Gardner
Conrad 21	Haywood	Hilgeman	Jenkins	Hubbard
Chapman 11	James	Kelly	Jesse	Saper
Vill	Yost	Walker	Walsh	Wilson 75

PRESENT 001

Farr	Ingram 90	Willeger
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ABSENT WITH LEAVE 004

Avoy	Poylars	Sanborn	Silly
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Speaker Hanaway declared the bill passed.

**REFERRAL OF HOUSE JOINT RESOLUTION**

The following House Joint Resolution was referred to the Committee indicated:

**HJR 58 - Special Committee on General Laws**

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]

# SENATE JOINT RESOLUTION NO. 29

92ND GENERAL ASSEMBLY

2004

SENATE

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## JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to the Constitution of Missouri relating to marriage.

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*Be it resolved by the Senate, the House of Representatives concurring therein*

That at the next general election to be held in the state of Missouri, on  
2 Tuesday next following the first Monday in November, 2004, or at a special  
3 election to be called by the governor for that purpose, there is hereby submitted  
4 to the qualified voters of this state, for adoption or rejection, the following  
5 amendment to article I of the Constitution of the state of Missouri:

Section A. Article I, Constitution of Missouri, is amended by adding  
2 thereto one new section, to be known as section 33, to read as follows:

Section 33. That to be valid and recognized in this state, a marriage  
2 shall exist only between a man and a woman.

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## PROCLAMATION

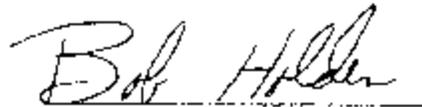
WHEREAS, by Senate Joint Resolution No. 20 the Ninety-Second General Assembly of the State of Missouri, in second regular session, which convened on January 7, 2004, did direct that at the next general election to be held in the State of Missouri, on Tuesday next following the first Monday in November, 2004, or at a special election to be called by the Governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to Article I of the Constitution of the State of Missouri:

Section A. Article I, Constitution of Missouri, is amended by adding thereto one new section, to be known as section 33, to read as follows:

Section 33. That to be valid and recognized in this state, a marriage shall exist only between a man and a woman.

NOW, THEREFORE, I, **BOB HOLDEN**, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the state of Missouri, and having noted the aforesaid action of the Missouri General Assembly as entered in its journal of May 14, 2004, do hereby call a special election to be held in this state on the 3rd day of August, 2004, to be conducted in the manner provided by law, at which special election there shall be submitted to the qualified voters, by its ballot title, the foregoing proposed amendment to the Constitution, the same to appear on a separate ballot without party designation, and to be so submitted as to enable the electors to vote on the proposed amendment separately, as required by Section 2(b) of Article XII of the Constitution of Missouri.

WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 19<sup>th</sup> day of May, 2004.



Bob Holden  
Governor

ATTEST:

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Matt Blunt  
Secretary of State



OFFICE OF THE SECRETARY OF STATE  
STATE OF MISSOURI  
JEFFERSON CITY  
65101

MATT BLEUM  
SECRETARY OF STATE

STATE CAPITOL  
ROOM 208  
JEFFERSON CITY, MISSOURI 65101

May 19, 2004

The Honorable Bob Holden  
Governor  
State Capitol, Room 218  
Jefferson City, Missouri 65101

Dear Governor Holden:

This comes in response to the three originals of the Proclamation calling for a special election of August 3, 2004, for the people's vote on Senate Joint Resolution No. 29 (SJR 29), which you delivered to my office this afternoon. I write to inform you of several legal requirements relating to placing this issue on the ballot.

For a constitutional amendment to be submitted to the electors for their approval or rejection, both the Missouri Constitution and state statutes require several things to occur. Article III, Section 30 of the Missouri Constitution requires Senate Joint Resolution No. 29 to be signed by the presiding officer of each house in open session. Once this occurs, the General Assembly will deliver SJR 29 to my office. Section 116.155, RSMo 2000 provides that the General Assembly may include in the joint resolution the official summary statement and a fiscal note summary or any statewide ballot measure it refers to the voters. If that is the case, no action by the Secretary of State or State Auditor to develop the ballot title is necessary. Section 116.160, RSMo 2000, provides that if the General Assembly adopts a joint resolution proposing a constitutional amendment without a fiscal note summary, after receipt of such resolution the Secretary of State shall promptly forward the resolution to the State Auditor. If the joint resolution contains no official summary statement, within twenty days after receipt of the resolution the Secretary of State shall develop and submit to the Attorney General a summary statement of the measure. The Attorney General has ten days to approve the summary statement. The Auditor has thirty days to prepare the fiscal note and fiscal summary. § 116.175, RSMo 2000. The Attorney General has ten days to approve the fiscal note summary. [d] Within three days of receiving the Attorney General's approval of the summary statement and fiscal note summary, the Secretary of State shall certify the official ballot title. § 116.180, RSMo 2000.

Only after all of the foregoing legal requirements have been completed, the ballot measure is ready to be certified to the election authorities. Section 116.240, RSMo 2000, provides: "Not later than the tenth Tuesday prior to an election at which a statewide ballot measure is to be voted on, the Secretary of State shall send each election authority a certified copy of the legal

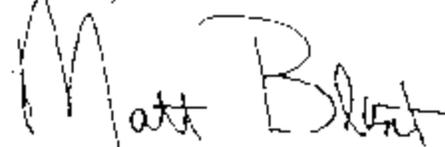
The Honorable Bob Holden  
May 19, 2004  
Page 2

notice to be published. The legal notice shall include the date and time of the election and a sample ballot." Likewise section 115-125, RSMo 2000 provides that notice must be received by the election authority by 5:00 p.m. on the tenth Tuesday prior to the election.

May 25, 2004, is the tenth Tuesday before the August 3, 2004 election. We have not received SJR 29 from the General Assembly. If we receive it from the General Assembly and all of the steps outlined above are completed by May 25, 2004, we will make every effort to notify the election authorities prior to the deadline.

I note that you reference and enclose with your proclamation a copy of the House journal entry of May 14, 2004 relating to SJR 29 showing the vote of each Representative. I would point out that this does not constitute delivery or receipt of SJR 29 by the Secretary of State as required by Chapter 116, RSMo. I understand that you may be relying on the Missouri Supreme Court case of Brown v. Morris, 290 S.W. 2d 160 (Mo banc 1956) which states that the Governor and the Courts may determine from the legislative journals whether a bill has passed both houses. This case has no application here because the issue is not whether SJR 29 passed - rather, the issue is whether the Secretary of State has received it. Again, my office has not received SJR 29 from the General Assembly.

Sincerely,



Matt Blunt

cc: The Honorable Peter Kincaid  
The Honorable Catherine Hanaway